

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2018 AUG 23 AM 8:29

VIRGINIA DRILLING COMPANY, LLC,

CATHY S. GILSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

v.

CIVIL ACTION NO. 17-C-1130  
Honorable Joanna I. Tabit

JUSTICE LOW SEAM MINING, INC.,

Defendant.

**RENEWED MOTION TO ENFORCE SETTLEMENT AGREEMENT**

NOW COMES the Plaintiff, Virginia Drilling Company, LLC, and hereby moves this Court for an Order to enforce the written settlement agreement between the parties herein as and further requests that this Settlement Agreement be reduced to a judgment and that Plaintiff be awarded its attorney fees in enforcing the agreement. For its grounds, Plaintiff states as follows:

1. Plaintiff and Defendant previously entered into a Mutual Settlement Agreement and Release to resolve accounts payable in this matter and other accounts on September 28, 2017.
2. When the Defendant would not execute Mutual Settlement Agreement and Release, Plaintiff's filed a Motion to Enforce Settlement Agreement on May 25, 2018.
3. Thereafter, a hearing was held on the same on June 21, 2018 and an Agreed Order was entered on July 10, 2018 whereby Defendant was to execute the signed written Mutual Settlement Agreement and Release. Defendant did this in accord with said Agreed Order.
4. Further, the Order of July 9, 2018 retained jurisdiction over the Settlement Agreement with this Honorable Court.
5. The Mutual Settlement Agreement and Release required that payments are to begin on

July 6, 2018 and continue on a monthly basis on the 6<sup>th</sup> day of each month until the settlement payment, with interest, is paid in full. A copy of said Mutual Settlement Agreement and Release is attached hereto and marked as **Exhibit 1**.


6. To date, the Justice Companies have not made payment as agreed upon to date despite several requests by the undersigned by email and telephone to the Justice Companies counsel requesting payment.

7. As such, Defendant is in breach of the Mutual Settlement Agreement and Release.

8. As this Court has retained jurisdiction over this settlement, Plaintiff requests from the Court an Order for the following:

- a. an order compelling Defendant to make all past due payments immediately and to keep the payment schedule current;
- b. an Order of Judgement ordering judgment in favor of the Plaintiff as against the Justice Companies, A&G Coal Corporation, Kentucky Fuel Corporation, Justice Low Seam Mining, Inc. and Bluestone Industries, Inc. in the amount equal to the principal sum contained in the Mutual Settlement Agreement and Release; and
- c. that Plaintiff be awarded its attorney fees in seeking enforcement of the Mutual Settlement Agreement and Release.

Virginia Drilling Company,  
By Counsel,



---

Josef A. Horter (WV Bar #1790)  
BAILEY & WYANT, PLLC  
500 Virginia Street, East, Suite 600  
Post Office Box 3710  
Charleston, West Virginia 25337-3710  
(304) 345-4222

## MUTUAL SETTLEMENT AGREEMENT AND RELEASE

THIS MUTUAL SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is voluntarily entered into by and between Virginia Drilling Company, LLC, Austin Sales, LLC and Dyno Nobel (hereinafter collectively referred to as "VEDCO"), and A & G Coal Corporation, Kentucky Fuel Corporation, Justice Low Seam Mining, Inc., and Bluestone Industries, Inc., (hereinafter collectively referred to as "Justice Companies").

WHEREAS, on or about August 9, 2017, VEDCO filed Complaints in the Circuit Court of Kanawha County, West Virginia asserting claims against Justice Companies for breach of contract, and collection of accounts.

WHEREAS, on or about September 14, 2017, Defendants Justice Companies filed Motions to Dismiss the claims of VEDCO.

WHEREAS, VEDCO and Justice Companies in mutual recognition of the uncertainties of litigation and the expenses which have been and will be incurred in the prosecution and defense of the lawsuit, as well as any possible future actions, complaints and/or charges VEDCO and Justice Companies may have or assert, have now reached a settlement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual understandings, covenants, and mutual releases contained herein, VEDCO and Justice Companies hereby voluntarily agree as follows:

1. In consideration for the mutual releases, promises, and representations made by VEDCO and Justice Companies in this Agreement, Justice Companies will pay VEDCO the sum of \$1,396,297.11 (the "settlement payment"), payable in twelve (12) consecutive monthly payments at five percent (5%) interest. The first payment of \$119,533.00 shall be due on or before July 6, 2018. Monthly payments of \$119,533.00 shall be due on the 6<sup>th</sup> day of each month thereafter until the settlement payment, with interest, is paid in full. Justice Companies will have the right to pre pay any payments or the remaining balance of the settlement payment. Each of the payments shall be made payable to Virginia Drilling Company and shall be paid at 1793 Dry Fork Road, P.O. Box 1198, Vansant, Virginia, 24656. The parties agree to dismiss, with prejudice, the action pending in the Circuit Court of Kanawha County, West Virginia. A copy of an amortization table governing repayment is attached as an Exhibit to this agreement.

2. Should any payment be more than ten (10) days late, a late charge of five percent (5%) shall be added to the balance and payment owed on the settlement payment. Should Justice Companies be more than twenty (20) late on any monthly payment, Justice Companies shall be considered in breach of this agreement and VEDCO shall have the right to immediate payment of



the remaining balance on the settlement payment as well as the right to file suit to collect the remaining balance. Should suit have to be filed by VEDCO to collect the balance of the settlement amount, then Justice Companies shall also be responsible for payment of VEDCO's attorney fees and costs in further collection of the balance of the settlement agreement.

3. VEDCO and Justice Companies, in consideration of the mutual covenants and conditions contained herein, do hereby remise, release and forever discharge each other and by these presents, do for themselves, their heirs, executors, administrators, successors, assigns, insurers and reinsurers, remise, release and forever discharge each other, their respective officers, directors, affiliates, insurers and reinsurers, heirs, executors, administrators, successors, and assigns, together with any and all other persons, firms or corporations of and from any claims on the Justice Company account balance as of March 31, 2017.

4. VEDCO and Justice Companies acknowledge and agree that:

- a) they understand this Agreement;
- b) that by entering into this Agreement and dismissing this Civil Action; and
- c) that they have consulted with an attorney or attorneys in connection with their decision to enter into this Agreement and have been represented by counsel throughout the negotiation and execution of this Agreement.

5. The parties stipulate and agree that all clauses and provisions of this Agreement are distinct and severable, and all parties understand, and it is their intent, that in the event this Agreement is ever held to be invalid or unenforceable (in whole or in part) as to any particular type of claim or as to any particular circumstances, it shall remain fully valid and enforceable as to all other claims and circumstances.

6. This Agreement contains the entire agreement of the parties and supersedes all previous negotiations, whether written or oral. This Agreement may be changed only by an instrument in writing signed by the party against whom the change, waiver, modification, extension or discharge is sought.

7. This Agreement shall inure to the benefit of, may be enforced by, and shall be binding on the parties and their heirs, executors, administrators, personal representatives, assigns and successors in interest.

8. In the event of any dispute about this Agreement, the laws of the State of West Virginia shall govern the validity, performance, enforcement, and all other aspects of this Agreement.

9. The parties agree that this Agreement may be executed in two or more counterparts, each of which (and any facsimile or electronic copy thereof) shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the dates set forth below.

VIRGINIA DRILLING COMPANY, LLC

By: 

Its: President

Date: 2.22.17

AUSTIN SALES, LLC

By: 

Its: President

Date: 2.22.17

DYNO NOBEL

By: 

Its: Vice President & Secretary

Date: 1/16/2018

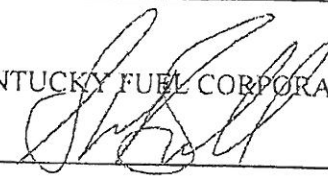
A&G COAL CORPORATION

By:  \_\_\_\_\_

Its: Vice President \_\_\_\_\_

Date: June 29, 2018 \_\_\_\_\_

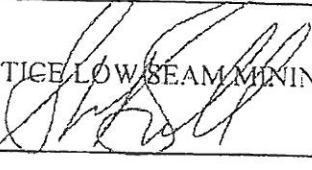
KENTUCKY FUEL CORPORATION

By:  \_\_\_\_\_

Its: Vice President \_\_\_\_\_

Date: June 29, 2018 \_\_\_\_\_

JUSTICE LOW SEAM MINING

By:  \_\_\_\_\_

Its: Vice President \_\_\_\_\_

Date: June 29, 2018 \_\_\_\_\_

BLUESTONE INDUSTRIES, INC.

By:  \_\_\_\_\_

Its: Vice President \_\_\_\_\_

Date: June 29, 2018 \_\_\_\_\_

# AMORTIZATION SCHEDULE FOR SETTLEMENT PAYMENT

Date	Interest	Principal	Balance
Jul, 2018	\$5,818	\$113,716	\$1,282,582
Aug, 2018	\$5,344	\$114,189	\$1,168,392
Sept, 2018	\$4,868	\$114,665	\$1,053,727
Oct, 2018	\$4,391	\$115,143	\$938,584
Nov, 2018	\$3,911	\$115,623	\$822,961
Dec, 2018	\$3,429	\$116,104	\$706,857
Jan, 2019	\$2,945	\$116,588	\$590,269
Feb, 2019	\$2,459	\$117,074	\$473,195
Mar, 2019	\$1,972	\$117,562	\$355,633
Apr, 2019	\$1,482	\$118,052	\$237,581
May, 2019	\$990	\$118,544	\$119,037
June, 2019	\$496	\$119,037	\$0

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2018 AUG 23 AM 8:29

VIRGINIA DRILLING COMPANY, LLC,

CATHY E. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

v.

CIVIL ACTION NO. 17-C-1130

Honorable Joanna I. Tabit

JUSTICE LOW SEAM MINING, INC.,

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing "RENEWED MOTION TO ENFORCE SETTLEMENT AGREEMENT" was served upon the following parties by U.S. Mail on this day, August 22, 2018:

Andrew L. Ellis  
Wooten, Davis, Hussell & Ellis, PLLC  
105 Capitol Street, Suite 200  
P.O. Box 3971  
Charleston, WV 25339



---

Josef A. Horter (WV Bar #1790)  
BAILEY & WYANT, PLLC  
500 Virginia Street, East, Suite 600  
Post Office Box 3710  
Charleston, West Virginia 25337-3710  
(304) 345-4222